

FCC MAIL SECTION

Before 93  
Federal Communications Commission  
Washington, D.C. 20554DISPATCHED BY  
MM Docket No. 93-218

In the Matter of

Amendment of Section 76.51  
of the Commission's Rules  
to Include Clearwater,  
Florida, in the Tampa-St. Petersburg,  
Florida, Television Market

RM-4895

**MEMORANDUM OPINION AND ORDER  
AND  
NOTICE OF PROPOSED RULE MAKING**

Adopted: July 16, 1993;

Released: July 29, 1993

Comment Date: August 27, 1993

Reply Comment Date: September 13, 1993

By the Chief, Mass Media Bureau:

1. Before the Commission is a petition for rule making filed January 24, 1985, by Christian Television Corporation, Inc. ("CTC"), licensee of television station WCLF(TV), Channel 22 (Independent), Clearwater, Florida. CTC seeks to amend Section 76.51 of the Commission's Rules, 47 C.F.R. §76.51, to change the designation of the Tampa-St. Petersburg, Florida, television market to "Tampa-St. Petersburg-Clearwater, Florida."<sup>1</sup>

2. On September 25, 1985, the Commission dismissed as moot a number of petitions and requests, including CTC's, involving mandatory carriage issues following the United States Court of Appeals decision in *Quincy Cable TV, Inc. v. FCC*<sup>2</sup> and the Commission's subsequent determination to set aside the cable "must-carry" rules.<sup>3</sup> On October 10, 1985, CTC filed a petition for reconsideration of the dismissal of its rulemaking petition. CTC therein alleged that while the initial rulemaking petition did contain must-carry related arguments, it was primarily directed to redesignating the subject market to equalize competition and copyright liabilities affecting all market-area stations. CTC further stated that invalidation of the must-carry rules

did not change its objective to place WCLF on an equal competitive footing with other area stations by seeking the proposed market redesignation.

3. In light of the Commission's recent actions implementing the provisions of Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"),<sup>4</sup> discussed in detail below, we will grant CTC's petition for reconsideration and consider its rulemaking request.

**BACKGROUND**

4. Section 76.51 of the Commission's Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine territorial exclusivity rights under Section 73.658(m) and helps define the scope of compulsory copyright license liability for cable operators. See 47 CFR §76.658(m) and 17 U.S.C. §111(f). Some of the markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities. See *CATV-Non Network Agreements*, 46 FCC 2d 892, 898 (1974). Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support. See *Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

5. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."<sup>5</sup>

6. Section 4 of the Cable Act, which amended Section 614 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. §614, requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in Section 76.51 of the Commission's Rules. See Section 614(f) of the Act.<sup>6</sup> The Commission stated that where sufficient evidence has

<sup>1</sup> The Commission has delegated to the Chief, Mass Media Bureau, authority to act on petitions for rule making seeking market redesignation and has stated that it expects "that requests for specific hyphenated market changes that appear worthy of consideration will be routinely docketed and issued as rulemaking proposals." See *Report and Order* in MM Docket No. 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2977-78, n.150 (1993).

<sup>2</sup> 768 F.2d 1434 (D.C. Cir. 1985), cert. denied, 476 U.S. 1169 (1986).

<sup>3</sup> On August 2, 1985, the Commission issued a Public Notice announcing that the Court of Appeals' decision had "vacated

the Commission's 'must carry' rules . . .," and shortly thereafter the Chief, Mass Media Bureau, dismissed, among others, the subject petition. See *Order*, MM Mimeo No. 6980, released September 10, 1985.

<sup>4</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>5</sup> See, e.g., *TV 14, Inc. (Rome, Ga.)*, 7 FCC Rcd 8591, 8592 (1992), citing *Major Television Markets (Fresno-Vidalia, California)*, 57 RR 2d 1122, 1124 (1985). See also *Press Broadcasting Company, Inc.*, 8 FCC Rcd 94, 95 (1993).

<sup>6</sup> In connection with the implementation of the broadcast signal carriage provisions of the Cable Act, the Commission

been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole, such cases will be considered under an expedited rulemaking procedure consisting of the issuance of a Notice of Proposed Rule Making based on the submitted petition.

#### THE PETITION

7. In its petition, CTC claims that amendment of Section 76.51 of the Commission's Rules to include the community of Clearwater as a designated community in the subject television market is appropriate to reflect competitive realities and is necessary to equalize competition among local television stations. CTC contends that WCLF's market location necessarily places it in competition with the other television stations licensed to communities in the Tampa-St. Petersburg market. It states that Clearwater is part of what is commonly known as the Tampa Bay area, which comprises the tri-city market of Clearwater, Tampa and St. Petersburg. CTC states that these communities, because of their close proximity (it notes that Clearwater and Tampa city limits are connected at their east-west boundaries), share common social, cultural, trade and economic interests.<sup>7</sup>

8. CTC contends that the commonality among these communities is also evidenced by the overlapping signal coverage provided by area stations. It states that WCLF places a Grade A signal contour over the television market, and places a city-grade signal over Tampa and over a substantial portion of St. Petersburg.<sup>8</sup> CTC states that the Grade B signals of stations licensed to Tampa and St. Petersburg totally encompass Clearwater. CTC also notes that both Nielsen and Arbitron include Clearwater in the Tampa-St. Petersburg market, as do program distributors who make programming available to WCLF at Tampa-St. Petersburg market rates.<sup>9</sup> Further, CTC states that WCLF's pricing structure reflects the fact that, although licensed to Clearwater, the station derives a substantial portion of its revenue from other cities in the market.

9. CTC alleges that despite WCLF's competitive position in the market, because Clearwater is not a designated community in the Section 76.51 market listings, the station is not considered a "local signal" for copyright purposes throughout the Tampa-St. Petersburg market in which it competes.<sup>10</sup> According to CTC, absent the requested amendment of Section 76.51, some area cable systems

would incur increased copyright liability by carrying WCLF placing the station at a competitive disadvantage to other market-area stations. Moreover, CTC believes that WCLF's competitive disadvantage threatens its independent voice in the market.

#### DISCUSSION

10. Based on the facts presented, we believe that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that WCLF and stations licensed to communities in the Tampa-St. Petersburg television market do compete for audiences and advertisers throughout much of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, CTC's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

#### ORDERING CLAUSE

11. For the reasons set forth above, we believe that CTC has set forth an adequate showing to justify the grant of its petition for reconsideration and the initiation of a rulemaking proceeding to amend Section 76.51 of the Commission's Rules. Accordingly, pursuant to delegated authority, IT IS ORDERED that the petition for reconsideration of the September 25, 1985 dismissal of its petition for rule making IS GRANTED, and its petition for rule making IS REINSTATED and IS GRANTED to the extent indicated herein.

#### ADMINISTRATIVE MATTERS

##### Ex Parte Rules -- Non-Restricted Proceeding

12. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206(a).

concluded that a major update of Section 76.51 was not necessary based on the record then before it. Nevertheless, the Commission did make some minor revisions to Section 76.51 of the Rules, and announced that it would consider further revisions to the list of television markets on a case-by-case basis. See *Report and Order* in MM Docket No. 92-259, *supra*.

<sup>7</sup> In this regard, CTC attaches letters from area political leaders recognizing the common links between these communities.

<sup>8</sup> CTC notes, in this regard, WCLF shares a transmitter tower with WTSP, Channel 10, St. Petersburg.

<sup>9</sup> CTC asserts that while WCLF places a primary emphasis on the programming needs and interests of its community of license, it also airs programming which addresses the needs and interests of Tampa and St. Petersburg and features guests from those communities. These efforts, according to CTC, also place WCLF in direct competition with other market stations.

<sup>10</sup> Stations licensed to communities specifically designated in Section 76.51 are considered local for all cable systems within

the 35-mile zones of all listed communities in a given hyphenated market. The absence of Clearwater as a designated community in this market list results in WCLF's classification as a "distant signal" for market-area cable systems more than 35 miles from Clearwater. Moreover, we note that Section 76.58(d) of the Commission's Rules required a cable operator to notify all local television stations by May 3, 1993, that they may not be entitled to mandatory carriage on the system because such carriage may cause an increased copyright liability to the cable system. Under the provisions of Section 76.55(c)(2) of the Rules, a local commercial television station otherwise entitled to mandatory carriage need not be carried on market-area cable systems if the station is considered a "distant signal" under the copyright compulsory license (17 U.S.C. §111) and the station does not agree to indemnify the cable operator for the increased copyright liability. See *Report and Order* in MM Docket No. 92-259, 8 FCC Rcd at 2973-74.

**Comment Information**

13. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **August 27, 1993**, and reply comments on or before **September 13, 1993**. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

**Initial Regulatory Flexibility Analysis**

14. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. A few television licensees and permittees will be affected by the proposed rule amendment. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

**Additional Information**

15. For additional information on this proceeding, contact Alan E. Aronowitz, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau